

CONCLUSION

For the reasons shown above, the reclassification of the BOCs' ICS, including in particular inmate collect call processing, as nonregulated is essential to prevent the subsidies and discrimination prohibited by Section 276. The BOCs must remove their ICS businesses in their entirety from regulation as Congress intended. The Commission must therefore require each BOC to refile its CEI plan, describing precisely how it will provide nondiscriminatory interconnection to the systems that provide inmate calling services, wherever located.

Dated: May 15, 1997

Respectfully submitted,



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Attachment 1

Excerpt from Inmate Calling Service Providers Coalition Comments

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Implementation of the Pay
Telephone Reclassification and
Compensation Provisions of the
Telecommunications Act of 1996

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CC Docket No. 96-128

COMMENTS OF INMATE CALLING SERVICES PROVIDERS COALITION

The Inmate Calling Services Providers Coalition (the "Coalition") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking, FCC 96-254 (June 6, 1996) ("Notice") in the above-captioned proceeding.

The Coalition is an ad hoc coalition of companies that provide highly specialized telephone equipment and services to inmates in confinement facilities. The Coalition's members¹ range in size from the nation's largest independent provider of inmate calling services to small companies serving only a handful of confinement facilities. They share in common the desire to offer the highest possible level of service

¹ The Coalition's members include AmeriTel Pay Phones, Inc., Communications Central Inc., Correctional Communications Corporation, Inc., InVision Telecom, Inc., M.O.G. Communications, Inc., Pay Tel Communications, Tataka and TELEQUIP Labs, Inc.

to confinement facilities and inmate callers at rates that are both fair and that provide a reasonable return on investment.

Many of the Coalition's members are also members of the American Public Communications Council, Inc. ("APCC"), which is the national trade association of the independent payphone industry. The Coalition joins in APCC's comments in this proceeding to the extent that those comments are consistent with the positions taken herein.

I. INTRODUCTION

Section 276 of the Communications Act of 1934, as recently amended by the Telecommunications Act of 1996 (the "Act")², directs the Commission "to promulgate new rules governing the payphone industry."³ Section 276 makes explicit that "inmate telephone service" is included within the ambit of the "payphone service[s]" that the Commission must address in this proceeding.⁴

The inmate calling environment is, in many ways, unique. In order to ensure that security is maintained, confinement facilities require that inmate calling services providers ("ICSPs") provide an extensive set of controls over inmate calling. In addition, ICSPs must address the historically high levels of fraud and uncollectibles associated

² 47 U.S.C. § 276.

³ Notice, ¶ 1.

⁴ Section 276 defines "payphone service" as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d).

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with the inmate environment. At the same time, inmate calling systems must offer inmates adequate and fair access to phones. In order to meet these requirements, ICSPs have developed increasingly sophisticated and expensive call processing systems, automated operators, call recording and monitoring equipment, and extensive fraud control programs.

In responding to Section 276's mandate, the Commission must recognize that the provision of inmate calling services is a distinct, specialized industry. While ICSPs share some of the same concerns as payphone providers, ICSPs also have some unique needs and inmate calling systems are not payphones. The Commission must be cognizant of these particularized needs of ICSPs in writing its rules implementing Section 276. Unlike payphone providers, ICSPs offer a unique, integrated package of services. Not only do ICSPs provide the calling equipment itself; they also serve as their own operator service provider and perform extensive call control and monitoring functions throughout the call. There is by necessity no clear demarcation between the ICSPs' gateway and transmission functions. By contrast, once a call placed from a payphone reaches the public network, the payphone provider's involvement in the call essentially ends.⁵

⁵ There may be some continued passive monitoring of the call, including, for example, timing the length of the call.

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II. THE COMMISSION MUST ENSURE THAT INMATE CALLING SERVICE PROVIDERS ARE FAIRLY COMPENSATED FOR EACH AND EVERY COMPLETED CALL

Section 276 of the Act directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphones."⁶ As mentioned above, Section 276 makes explicit that "payphone service" includes "the provision of inmate telephone service in correctional institutions."⁷ Thus, the Commission is under a Congressional mandate to ensure that ICSPs are fairly compensated for every call.

A. The Commission Must Prescribe an Inmate System Compensation Charge to Ensure that ICSPs Are Fairly Compensated for Each and Every Call

While the Commission tentatively concluded in the Notice that it "need not prescribe per-call compensation for 0+ calls" generally,⁸ it is critical that the Commission

⁶ 47 U.S.C. § 276(b)(1)(a).

⁷ 47 U.S.C. § 276(d).

⁸ Notice, ¶ 16. With respect to 0+ calls from public payphones, the Commission reasoned that since providers receive commissions from their presubscribed IXC for 0+ calls, "competition in this area ensures 'fair' compensation for payphone providers." *Id.* While the Coalition takes no position with respect to payphones, the Commission's reasoning does not in any event apply to ICSPs. Most ICSPs provide their own inmate calling services, using store-and-forward technology to re-route 0+ calls as direct dialed, storing the billing information (i.e. the billed party number) for future collection. Thus, they receive no third-party commissions. While ICSPs do receive revenue for these calls, that revenue, as shown below, is for the "carrier function and does not include any allowances to recover the cost of the inmate services. In any event, the revenue is not adequate to fairly compensate ICSPs given the extraordinary costs of doing business in the inmate environment.

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prescribe such compensation for ICSPs, regardless of whether it does so for public payphones. There are two reasons for this. First, unlike general payphone providers, all calls handled by ICSPs are 0+. Section 276 places an affirmative duty on the Commission to ensure fair compensation for all calls. The Commission cannot fulfill this mandate in the inmate environment if the Commission excludes 0+ inmate collect calls from its implementing rules.

Second, a large percentage of the inmate 0+ collect calls handled by ICSPs are intraLATA.⁹ In most states, these intraLATA calls are subject to rate ceilings based on incumbent local exchange carriers' ("LECs") standard 0+ collect calling service rates. Those rates are the same as the rates charged from any business or residential phone. They provide compensation only for the transmission element of the call; they do not take into account the considerable non-transmission costs unique to the inmate environment and fail to fairly compensate ICSPs for their integrated package of services.¹⁰ Moreover, the compensation provided by the Commission pursuant to Section 276 must be "explicit", rather than an "implicit" element of the transmission charge.¹¹

⁹ According to figures provided by a representative member of the Coalition, 85% of calls from the county jails which they have under contract are intraLATA (75% local, 10% intraLATA).

¹⁰ As the Commission found in the Notice, it must address the issue of compensation where a "government-mandated rate . . . may not be high enough to be 'fairly' compensatory." Notice, ¶ 18 n. 54.

¹¹ C.f. 47 U.S.C. § 254(e).

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Prescribing "fair compensation" for 0+ calls in the inmate environment even if the Commission does not do so with respect to 0+ calls in the general payphone environment is consistent with Section 276. Section 276 evidences Congress' intent that the Commission can address inmate calling services in a different manner than pay telephones. Section 276 defines "payphone service" as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."¹² By including "inmate telephone service" in the definition separately from general pay telephones, Congress made clear that they are not the same. Moreover, the definition contrasts the provision of general pay telephones with the provision of inmate telephone services. The focus on "services" in the instance of inmate calling underscores that ICSPs, unlike payphone providers, provide their own operator services and other services as an integrated package in addition to providing the equipment and a gateway into the public network. Thus, while the regulatory regime of Section 276 applies to both payphone and inmate calling services, there is a recognition that the two represent different packages of services that must be fairly compensated and that the Commission need not take the same approach in both cases.¹³

B. The Commission Must Address the Unique Costs Associated with the Inmate Environment

Three factors in particular contribute to the unique costs of the ICSP's integrated package of services and equipment. First, the specialized inmate calling

¹² 47 U.S.C. § 276(d).

¹³ *Id.*

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systems developed by ICSPs to meet the call control needs of confinement facilities require significant capital investment. Second, the level of bad debt associated with calls from confinement facilities is much higher than from public payphones. Third, labor expenses are high because ICSPs must maintain a customer services staff equipped to address the needs of the inmates, the inmates' families, and the confinement facilities. Each of these factors are discussed separately below.

1. Inmate Calling Systems

Inmate calling systems are designed to provide confinement facilities with an extensive series of control mechanisms over inmate calling. Those call controls serve to prevent or deter such abuses as the harassment of witnesses and jurors, and the use of inmate calling systems to engage in criminal activity. They also play a significant role in reducing the level of fraudulent inmate calling. At the same time, the call controls function to ensure that the inmates are provided with fair and reasonable access to phones.

The most basic of those call control functions is the blocking of all non-0+ collect calls. Inmate calling systems must block all direct-dialed calls, access code calls, and calls to numbers such as 700/800/900, 950, 976, 411, and repair service. Blocking calls to these numbers reduces fraudulent calling by limiting access to the public telephone network. Inmates thus have less opportunity to manipulate either a live operator or the network in order to defeat calling restrictions.

Another basic requirement for inmate calling systems is the ability to limit call duration and/or to limit calling to a particular time of day, which often varies from inmate to inmate. This serves to provide confinement facilities with control over inmate phone usage while allowing more inmates greater access to the phones available to them. Additionally, restrictions may be placed on the number of calls an inmate is permitted to make over a given period.

The ability to restrict inmate calling by called number is another specialized requirement of inmate calling systems. Confinement facilities often require that ICSPs block an inmate's ability to make calls to certain designated numbers, such as to judges or witnesses. Additionally, confinement facilities may require the ability to restrict inmate calling only to certain pre-designated numbers, such as family members or the inmate's attorney. These requirements prevent or reduce harassment, fraudulent calling, and the use of the inmate calling system to engage in other criminal activity.

At the request of the confinement facility, many ICSPs have put into place additional called number screening mechanisms that permit free calling to certain predesignated numbers. These numbers typically include the public defenders' office, bail bondsmen, and commissary services.¹⁴

Some confinement facilities also request that ICSPs block calls attempted by particular inmates or calls attempted from certain inmate phones. This requirement

¹⁴ In addition to the costs involved in maintaining the hardware and software to provide this service, the ICSP also bears the costs of transmission, which can amount to \$.25 or more for a 10-minute call.

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assists in maintaining security. During a disturbance, for example, the ability to place calls can be restricted or disallowed completely. Confinement facilities also request that the ICSP be able to shut down the inmate calling system when inmates are being transferred in or out of the facility in order to reduce the security risk.

These call screening controls can require that the inmate calling system check four or more separate databases before a call is placed. The typical inmate call begins with the inmate lifting the receiver in his cell block. Responding to a series of prompts, he enters his personal identification number ("PIN") and the number he wishes to dial.¹⁵ The PIN is then checked against an internal database for verification and to determine if the inmate has been pre-approved to place calls to certain numbers. If there are no pre-approved numbers associated with a given PIN, it is checked against a "negative database" of numbers that the inmate is prohibited from calling (e.g. witnesses or jurors). Next the called number is checked to ensure that it does not fall into any of the categories of blocked numbers (e.g. 800, 950, etc.) and to verify that it is not an international number. Assuming that the called number is not blocked, it is then sent to yet another internal database to check for the frequency of the calling inmate's phone calls to the same number. This so-called "velocity check" is designed to detect calls to "hot houses" established by an accomplice to allow the inmate caller to make three-way calls or to otherwise defeat the calling restrictions and gain open access to the public network. In addition, the called number may be checked against other inmates' calling

¹⁵ Not all confinement facilities use a PIN system. Increasingly, many confinement facilities are moving towards requiring that inmate calling systems employ voice recognition technology to identify individual inmates.

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records. Calls to the same location from multiple inmates may be an indication of criminal activity, for example, a drug ring. These numbers are reported to the proper authorities. Finally, the called number may be checked against the ICSP's billing database to check for an unusually high balance owed by the called party. This both helps to minimize the ICSP's exposure to bad debt and protects the called party from burdensome bills.

After all the internal database checks are completed, the called number is sent to the Line Information Data Base ("LIDB")¹⁶ to determine if the number to be called has screening to block calls from being billed to it (e.g., payphones, hospitals or numbers blocked by the customer from receiving collect calls). This is necessary because if the call is completed to a number with billed number screening in many instances it is unbillable.

Only after the call has passed each of these screens is the call placed. During the call, the call controls continue. For example, the call is monitored to limit the duration of the call. When the time limit nears, the call processor warns of the time left; upon expiration of the time, the call is disconnected. The call is also monitored to detect and prevent three-way calling or call transfer to a third number once the called party

¹⁶ LIDB is a series of interconnected databases maintained by the LECs to enable them to share validation and screening data with each other and other providers. Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3533, ¶ 27 (1992). LIDB data must be provided on a non-discriminatory basis. Id., ¶ 30. Requesting carriers are charged a fee on a per call basis. Id.

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accepts a collect call from an inmate. Again, this serves both to prevent the inmate from gaining open access to the public network and to limit fraud. Some inmate calling systems also use voice overlays to randomly announce during the course of the call that the call is from a confinement facility. This serves to prevent inmates from defrauding called parties who are unaware that the call they have received is from an inmate in a confinement facility.

In addition to the call controls discussed above, confinement facilities also typically require listening and/or recording capability. This capability is a valuable aid in detecting and preventing criminal activity. For example, the Arizona Department of Corrections reported that the monitoring of inmate calls enabled them to prevent a murder an inmate was plotting with an accomplice.¹⁷

Finally, inmate calling systems must also generally be able to provide customized call detail reports. These reports typically include the date and time of the call, the identity of the calling inmate, call duration, and the called number. Particularly where they are provided on a real time basis, the call detail reports assist in the detection and prevention of criminal activity and fraudulent calling. The call reports also provide the confinement facility with a record of each inmate's calling activity. This has proved to be a critical aid in apprehending escapees.

¹⁷ See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Dkt. No. 91-35, Comments of Arizona Department of Corrections (April 1, 1991).

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2. Bad Debt

Despite the best efforts of ICSPs, the levels of fraudulent or otherwise uncollectible calls run much higher than in the general payphone industry. According to data supplied by two major billing clearinghouses serving the inmate calling services industry, ICSP bad debt can be 30% or higher. On average, bad debt runs at roughly 15-20%.¹⁸ Even those ICSPs that have been the most aggressive in implementing measures designed to reduce fraud have been unable to reduce their bad debt below 8-15% in most instances.¹⁹ This is still several times higher than the level of bad debt experienced by non-inmate operator service providers billing through the clearinghouses.

3. Personnel

In addition to requiring specialized equipment and the high levels of bad debt, operating in the inmate environment is also extremely expensive because of the labor-intensive nature of the industry. Many independent ICSPs maintain a service and support staff on-site in the confinement facility to address inmate inquiries and to ensure that the inmate calling systems are in working order. The on-site staff also often assists the facility by administering the PIN system on its behalf. ICSPs also must maintain

¹⁸ See letter from L. Basinger, Director of Sales, Zero Plus Dialing, Inc., to P. Braxton, Paytel Communications, Inc., dated July 6, 1994 (attached as Exhibit 1); letter from R. Evans, General Manager, OAN Services, Inc., to V. Townsend, APCC Inmate Services Committee, dated October 5, 1995 (attached as Exhibit 2).

¹⁹ See, e.g., letter from A. Schumacher, Billing/Fraud Control Manager, Consolidated Communications, to V. Townsend, N.C. Payphone Association, dated February 16, 1995 (attached as Exhibit 3).

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fully-staffed operations centers off-premises to respond to facility request and inmate and family concerns.

In addition to these customer support functions, ICSP personnel must also address the high rates of fraudulent calling from confinement facilities. Each day, the detailed call reports generated by the inmate calling system must be analyzed to detect possible fraud. While ICSPs have developed sophisticated software to perform the raw data analysis, trained staff must then review the output. Where calling patterns indicate possible fraud, the ICSP's personnel must immediately investigate and, if necessary, take corrective action. One ICSP conducts roughly 50 fraud investigations daily on a base of 400 phones serving 6,000 inmates. This investigation can include securing billing name and address information, contacting the called party at questionable numbers, and conducting credit checks. If the ICSP is unable to confirm the billing information, the number is immediately blocked. If three-way calling or fraudulent activity is suspected, this information is shared with facility administration. The ICSP also coordinates its investigation and shares information with the appropriate LEC and interexchange carrier counterparts ("IXC") in order to reduce subscription fraud.

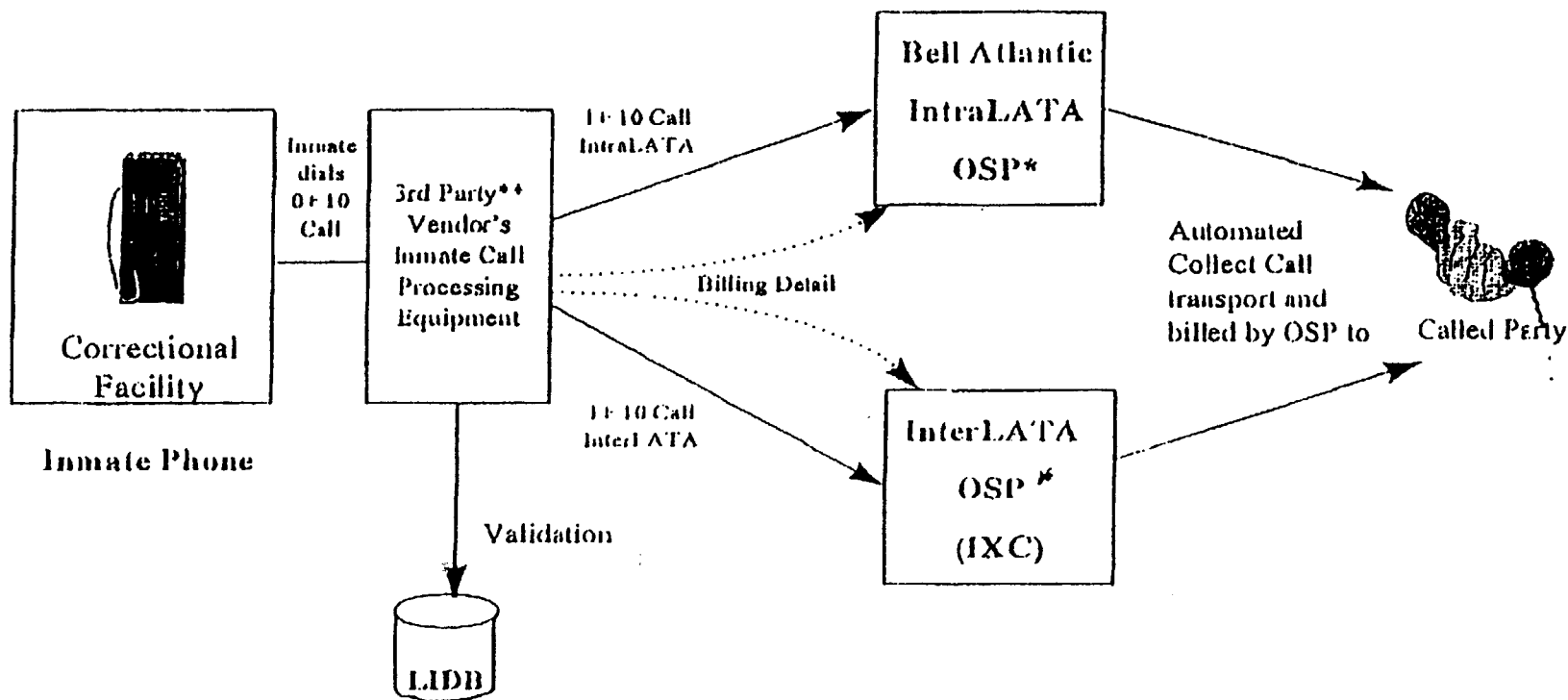
**C. A \$.90 Inmate System Compensation Charge
Will Allow ICSPs to Recover Their Unique
Costs and Will Provide Fair Compensation**

ICSPs must be fairly compensated and there must be full recovery of the unique costs they face. Since those costs are associated with all calls from confinement

Attachment 2

Chart From Bell Atlantic *Ex Parte* Depicting Provision of ICS

Inmate Collect Calling



* Pays PCC/Commission to Inmate Telephone Service Providers for calls made from their inmate phones

** Call processing equipment owned by 3rd party vendor is utilized in over 80% of inmate accounts. In a few cases, Bell Atlantic owns the equipment. In the remaining accounts, no call processing equipment is utilized.

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 1997, I caused a copy of the foregoing Consolidated Application for Review of the CEI Orders by the Inmate Calling Service Providers Coalition to be sent by first class mail, postage prepaid, to:

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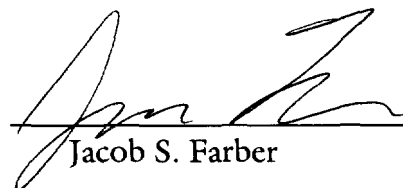
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